

Message Text

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ORIGIN EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIE-00

INRE-00 NSCE-00 SSO-00 EB-07 MC-02 COME-00 TRSE-00

OMB-01 SAM-01 /064 R

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JAG - CAPT. FRUCHTERMAN

OGC(IA) - MR. ALLEN

L/SFP -MR. FIELDS (INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID IMMEDIATE

C O N F I D E N T I A L STATE 013804

E.O. 11652:GDS

TAGS: MARR, U.S/SP

SUBJECT: G-3 TARIFF

REF.: BREISKY/BARRINGER TELCON, JAN. 19

1. SINCE MID-1975, SPANISH HAVE ATTEMPTED TO COLLECT G-3 TARIFF ON U.S. MILITARY CARGOES UNLOADED AT SPANISH COMMERCIAL PORTS FROM U.S. VESSELS CHARTERED BY MILITARY SEALIFT COMMAND. WE VIEW G-3 TARIFF AS A TAX FROM WHICH U.S. SHOULD BE EXEMPT UNDER TAX RELIEF ANNEX TO 1953 MUTUAL DEFENSE ASSISTANCE AGREEMENT. THAT ANNEX IS NOT NOW UNDER NEGOTIATION, ALTHOUGH US EXPRESSED FORMAL WILLINGNESS IN 1970 TO RENEGOTIATE IT. SPAIN CONSIDERS G-3 TARIFF AS CHARGE FOR SERVICES REQUESTED AND RECEIVED, AND THEREFORE ONE TO WHICH U.S. IS SUBJECT EVEN UNDER
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TAX RELIEF ANNEX.

2. PAYMENT OF G-3 TARIFF IN ADDITION TO NUMEROUS OTHER SPANISH PORT CHARGES WHICH WE DO PAY WOULD SET MOST UNFORTUNATE PRECEDENT FOR U.S. ARRANGEMENTS WITH OTHER HOST COUNTRIES WORLDWIDE. IN ADDITION, WE OBJECT TO GOS INSISTENCE ON PRESSING MATTER AT THE PORT AND THEN DISCLAIMING RESPONSIBILITY FOR ACTIONS OF OFFICIALS THERE. IN ALGECIRAS LAST MONTH SPANISH FROZE BANK ACCOUNTS OF THE LOCAL AGENT OF SEA-LAND CORPORATION. THIS IS INCONSISTENT WITH NORMAL DIPLOMATIC PRACTICE. THEIR STATED REASON IS THAT 1953 AGREEMENTS WERE NEVER RATIFIED BY CORTES AND THEREFORE DO NOT HAVE THE FORCE OF SPANISH LAW.

3. IN COURSE OF FISCAL NEGOTIATIONS LAST WEEK SPANISH PRESSED US TO INCLUDE A GENERAL ARTICLE OBLIGATING U.S. TO PAY ALL CHARGES BY PUBLIC OR PRIVATE CONCESSIONAIRES OF ROADS, BRIDGES AND HARBORS. WE OBJECTED, SINCE THIS WOULD SIMPLY RESOLVE G-3 TARIFF IN SPANISH FAVOR. SPANISH SIDE EVENTUALLY SUGGESTED WITHDRAWING THE ARTICLE, EVEN THOUGH US SIDE WAS WILLING TO INCLUDE RECOGNITION OF OUR PAYMENT OF HIGHWAY TOLLS, WHICH ARE A SEPARATE AND DISTINGUISHABLE MATTER. WE ACCEPTED SPANISH SUGGESTION, AND ARTICLE HAS NOW BEEN DROPPED.

4. IN CONNECTION WITH DROPPING OF ARTICLE REFERRED TO ABOVE, WE PROPOSED LAST WEEK FOLLOWING EXCHANGE OF IDENTICAL DIPLOMATIC NOTES:

QUOTE: I HAVE THE HONOR TO PROPOSE THAT OUR TWO GOVERNMENTS USE THEIR BEST EFFORTS AND TAKE ALL STEPS WITHIN THE FRAMEWORK OF THE SPANISH LEGAL SYSTEM TO INSURE THAT NO ACTION IS TAKEN WITH RESPECT TO THE G-3 TARIFF QUESTION UNTIL THE LEGAL AND TECHNICAL ISSUES INVOLVED HAVE BEEN SETTLED AT THE DIPLOMATIC LEVEL. IT IS THE INTENTION OF MY GOVERNMENT TO ENTER INTO DISCUSSIONS, AS A SEPARATE MATTER, WITH A VIEW TO THE EXPEDITIOUS RESOLUTION OF THE G-3 TARIFF QUESTION IN A MANNER SATISFACTORY TO BOTH GOVERNMENTS. UNQUOTE.

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5. IN PRESENTING ABOVE TEXT, US SIDE SAID IT WAS NOT JUST TRYING TO POSTPONE THE ISSUE BY DELAYING TACTICS; G-3 TRICKY AND COMPLEX QUESTION WHICH SHOULD BE HANDLED BY TAX SPECIALISTS FROM BOTH GOVERNMENTS, AND IN VERY NEAR FUTURE. FOR US, THIS WOULD BE ASSISTANT LEGAL ADVISER FOR SPECIAL FUNCTIONAL AFFAIRS LOUIS G. FIELDS, JR. TEXT WAS TENTATIVELY ACCEPTED BY ZAVALA, WHO NOW APPEARS TO HAVE BEEN OVERRULED BY PERINAT.

6. WE CONTINUE TO BELIEVE THAT G-3 MATTER CAN BEST BE RESOLVED SEPARATELY. IT INVOLVES ISSUES WHICH ARE BOTH BROADER AND MORE TECHNICAL THAN THOSE OF CURRENT BASE NEGOTIATIONS AND THEIR RELATED FISCAL AGREEMENTS. A SETTLEMENT WITH SPAIN NOW WOULD BE DISADVANTAGEOUS FROM STANDPOINT OF WORLDWIDE EXEMPTIONS FROM TAX RELIEF ON US GOVERNMENT EXPENDITURES, AND SUBJECT TO POTENTIAL GAO AS WELL AS CONGRESSIONAL CRITICISM LATER IF NOT FULLY DEFENDED AND JUSTIFIED ON ITS OWN SEPARATE MERITS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY TRANSPORTATION, PORT CHARGES, TAX RELIEF, TARIFFS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 20 JAN 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE013804
Document Source: CORE
Document Unique ID: 00
Drafter: MR. BARRINGER:MJK
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760020-0391
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760140/aaaabjnx.tel
Line Count: 126
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 11 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 MAY 2004 by ellisoob>; APPROVED <02 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: G-3 TARIFF
TAGS: MARR, US, SP
To: MADRID
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006